

**INTERLOCAL AGREEMENT
XFINITY ARENA SCOREBOARD LOAN**

This Interlocal Agreement (this "**Agreement**") is entered into as of May 27, 2015, by and between the CITY OF EVERETT, a Washington municipal corporation (the "**City**"), EVERETT PUBLIC FACILITIES DISTRICT, a Washington municipal corporation (the "**District**").

RECITALS

A. The District was formed by the City for the specific purpose of acquiring, constructing, owning, remodeling, maintaining, equipping, re-equipping, repairing, financing, and operating (either directly or by contract) a multi-purpose regional special XFINITY Arena (the "**XFINITY Arena**").

B. The District has determined that it is necessary to replace the scoreboard in the XFINITY Arena (the "**Scoreboard Project**"). The District has determined that failure to replace the scoreboard will have a detrimental impact on XFINITY Arena's ability to retain and attract users.

C. The City owns the land on which XFINITY Arena is located. In accordance with certain agreements relating to XFINITY Arena, it is anticipated that the City will take title to the XFINITY Arena on or about December 31, 2026. The City also has obligations under the bonds relating to the XFINITY Arena. As set forth in the bond instruments, these obligations include certain guaranty and payment obligations. Accordingly, it is in the City's interest that XFINITY Arena be financially and operationally sound. The City and the District are also parties to the Interlocal Agreement dated October 1, 2014, which was in connection with the 2014 District Refunding Bonds, as defined therein (the "**2014 Interlocal Agreement**").

D. The City agrees that the Scoreboard Project is necessary for the XFINITY Arena. The City also believes that, in light of the City's upcoming ownership of the XFINITY Arena and the City's bond obligations, the Scoreboard Project is in the best interest of the City. Therefore, the City has agreed to loan \$665,000 to District for the Scoreboard Project.

E. Under the 2014 Interlocal Agreement, the City is making Repayment Deficiency Loans to the District, which the District repays from its Excess Revenues Fund. The City and District have agreed that the District will repay the scoreboard loan from the Excess Revenues Fund after payment in full of all outstanding Repayment Deficiency Loans. The City and District have also agreed that the remaining amount of the scoreboard loan will be repaid on December 31, 2026, unless the City as anticipated takes title to the XFINITY Arena on such date, in which case any portion of the scoreboard loan remaining outstanding and unpaid on such date shall be deemed fully satisfied by the transfer.

EPFD - Everett Public Facilities District

F. The parties desire to enter into this Agreement to set forth the terms and conditions of the loan, pursuant to the Interlocal Cooperation Act, chapter 39.34 RCW.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. The Loan.

a. Loan Amount. The City agrees to loan six hundred and sixty five thousand dollars (\$665,000) to the District for the Scoreboard Project (the “***Scoreboard Loan***”). The District is prohibited from using the Scoreboard Loan for any use other than the Scoreboard Project.

b. Maturity Date. The Scoreboard Loan will have a term that commences on the date of this Agreement and expires on the December 31, 2026 (the “Maturity Date”).

c. Interest Rate. Interest shall accrue on all amounts owing under the Scoreboard Loan at an interest rate equal to rate equal to the then effective interfund loan rate of the City, adjusted monthly (“***Interest Rate***”).

d. Repayment.

(1) Monthly Payments from Excess Revenues Fund. In accordance with Section 3.02(e) of the 2014 Interlocal Agreement, the District has established an Excess Revenues Fund, from which the District has certain obligations to repay Repayment Deficiency Loans, as defined in the 2014 Interlocal Agreement. Until all principal and interest on the Scoreboard Loan is repaid in full, the District shall pay to the City each month all revenues that remain in the Excess Revenues Fund after repayment in full of all outstanding Repayment Deficiency Loans.

(2) Maturity Date. On the Maturity Date, but subject to Section 1.d(3) below, the entire principal balance of the Scoreboard Loan, any outstanding interest accrued, and any other amounts owing on account of the Scoreboard Loan, shall be immediately due and payable.

(3) Satisfaction by Transfer of the XFINITY Arena to the City. Any Scoreboard Loan remaining outstanding and unpaid at the time that title to the XFINITY Arena has been transferred to the City shall be deemed fully satisfied.

e. Prepayment. District may prepay the Loan in cash in whole or in part at any time.

f. Acceleration. Upon the occurrence of a default in District's obligations to pay any amount payable hereunder as and when due or any other breach under this Agreement, and upon notice from City to District of such default or breach and the passage of 30 calendar days without such default or breach being cured, City may declare, at its sole option and without any further notice, the entire indebtedness evidenced hereby immediately due and payable in full. Failure to exercise this option or any other right City may have shall not constitute a waiver of the right to exercise such option or any other right in the event of any subsequent default or breach.

2. Books and Records. Upon written request from the City, the District will provide the City with all books and records (such as receipts or other documentation) necessary to document Scoreboard Loan expenditures.

3. Deadline. The District shall complete the Scoreboard Project no later than December 31, 2016.

4. Expiration of Agreement. This Agreement expires on the date that all principal and interest on the Scoreboard Loan is repaid in full.

5. Contracting and Maintenance. The District shall procure and contract for the Scoreboard Project in accordance with Washington law. The District will own the scoreboard and is solely responsible for all scoreboard maintenance.

6. Subordinate to All Other Financing. This Agreement and the Scoreboard Loan are subordinate in every respect to all other past, current and future District financing. Without limiting the breadth of this subordination, the District and the City agree that:

(a) If this Agreement or the Scoreboard Loan causes, or may be construed to cause, any default or breach under any other past, current or future agreement related to District financing (such as, for example, the 2014 Interlocal Agreement and the bonds and loans referred to therein), then this Agreement and the Scoreboard Loan shall be deemed, without any further action necessary by the City or District, to be amended so as to prevent (or cure, as the case may be) such default or breach; and

(b) In the event of any conflict between the provisions of this Agreement and the provisions in any other agreement related to District financing (such as, for example, the 2014 Interlocal Agreement and the bonds and loans referred to therein), then the provisions of such other agreement(s) shall control.

7. Indemnification. To the maximum extent permitted by law, the District will defend, indemnify, and hold harmless the City and all of its officers, employees, and agents from all claims, demands, suits, actions, losses, and liability of any kind, to the extent arising from or relating to (a) the Scoreboard Project; (b) breach of this Agreement

by the District or its agents or contractors, or (c) the negligence or willful misconduct of the District or its agents or contractors. The District agrees that its obligations under this Section 7 extend to any claim, demand, or cause of action brought by, or on behalf of, any of its employees or agents, and for that purpose the parties specifically waive, with respect to each other only, any immunity under RCW Title 51.

8. General Provisions.

a. Administration. Each party to this Agreement shall serve as an administrator of this Agreement for the purposes of compliance with RCW 39.34.030 for each party's respective actions in performance of this Agreement.

b. Governing Law. The laws of the State of Washington, without giving effect to principles of conflict of laws, govern all matters arising out of or relating to this Agreement.

c. Venue. The parties shall bring any litigation arising out of or relating to this Agreement only before the Snohomish County Superior Court.

d. Complete Agreement. This Agreement constitutes the entire agreement of the parties relating to the subject matter of this Agreement. This Agreement supersedes and replaces all other written or oral agreements thereto.

e. Amendment. No amendment to this Agreement will be effective unless in writing and signed by the Mayor of the City and by the authorized representatives of each other party.

f. Waiver. No waiver of satisfaction of any condition or nonperformance of an obligation under this Agreement will be effective unless it is in writing and signed by the party granting the waiver, and no such waiver will constitute a waiver of satisfaction of any other condition or nonperformance of any other obligation.

g. Severability. If any provision of this Agreement is unenforceable to any extent, the remainder of this Agreement, or the application of that provision to any persons or circumstances other than those as to which it is held unenforceable, will not be affected by that unenforceability and will be enforceable to the fullest extent permitted by law.

h. Notice. For a notice under this Agreement to be valid, it must be in writing and the sending party must use one of the following methods of delivery: (A) personal delivery to the address stated below; (B) first class postage prepaid U.S. Mail to the address stated below; or (C) nationally recognized courier to the address stated below, with all fees prepaid.

Notice to City	Notice to District
City of Everett Attn: Susy Haugen 2930 Wetmore Ave Everett, WA 98201	Everett Public Facilities District Attn: Board President 2000 Hewitt Ave Everett, Washington 98206

A party may change its address by delivering written notice to the other party of the new address.

i. Attorneys Fees and Costs. The prevailing party in any action brought to enforce any obligations under this Agreement shall be entitled to recover from the non-prevailing party or parties an amount equal to the reasonable attorneys fees and costs incurred by the prevailing party, including without limitation any costs incurred on appeal or in any bankruptcy proceeding.

j. No Third-Party Beneficiaries. The provisions of this Agreement are for the sole benefit of the parties to this Agreement. No other persons have any rights or remedies under this Agreement.

k. Compliance with the Washington State Public Records Act. The parties acknowledge they are subject to the Public Records Act, chapter 42.56 RCW. Both parties shall cooperate with each other so that each may comply with all of its obligations under the Public Records Act.

l. Recording/Website Posting of this Agreement. This Agreement shall be recorded or otherwise made available to the public in accordance with RCW 39.34.040.

m. Survival. The following Sections survive termination or expiration of this Agreement: Sections 2, 6, 7, 8.

NOTICE IS HEREBY GIVEN THAT ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, MODIFY LOAN TERMS, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

The parties have executed this Agreement as of the date first above written.

CITY:

District:

CITY OF EVERETT

EVERETT PUBLIC FACILITIES DISTRICT

By: Ray Stephanson
Ray Stephanson, Mayor

By: Gary Weikel
Name: GARY WEIKEL

Title: PRESIDENT

ATTEST:

By: Sharon Fuller
Sharon Fuller, City Clerk

APPROVED AS TO FORM:

By: James D. Iles
James D. Iles, City Attorney

Agreement

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

An Interlocal Agreement
between the City of Everett and
the Everett Public Facilities
District to establish a loan
agreement for the acquisition
of a video scoreboard for
XFINITY Arena.

4/29/15

Briefing
Proposed Action
Consent
Action
First Reading
Second Reading
Third Reading
Public Hearing
Budget Advisory

COUNCIL BILL #

Originating Department

Contact Person

Phone Number

FOR AGENDA OF

Administration

Debra Bryant

X8608

4/29/15

Initialed by:

Department Head

CAA

Council President

db
db

Location

Preceding Action

Attachments

Department(s) Approval

Amount Budgeted	-0-	
Expenditure Required	665,000	Account Number(s):
Budget Remaining	-0-	CIP 4 Fund 162
Additional Required	665,000	

DETAILED SUMMARY STATEMENT: The existing scoreboard at the XFINITY Arena has reached the end of its useful life and must be replaced. The Everett Public Facilities District has determined that failure to replace the scoreboard would have a detrimental impact on the Arena's ability to retain and attract users. It is in the City's best interest that the Arena is financially and operationally sound.

Because the District does not have sufficient funds to purchase the scoreboard at this time, a loan from the City is necessary to complete the transaction. This agreement establishes the terms and conditions of that loan.

RECOMMENDATION: Authorize the Mayor to sign the Interlocal Agreement between the City of Everett and the Everett Public Facilities District to establish a loan agreement for the acquisition of a video scoreboard for XFINITY Arena.

*Council Approved
5/6/15
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